Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Message Text

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INFO AMEMBASSY BERLIN 0000

UNCLAS STATE 013435

FOLLOWING TELEGRAM FROM MUNICH DATED JANUARY 13, 1978
SENT SECSTATE WASHDC, BONN IS REPEATED TO YOU:
QUOTE

UNCLAS MUNICH 00193

SECSTATE PASS TO FOREIGN CLAIMS SETTLEMENT COMMISSION
SECSTATE FOR L

BONN FOR PFUND

FROM CHARIG, AMCONSUL MUNICH

SUBJECT: OVERLAPPING CLAIMS - GERMAN ADMIN COURT DECISIONS
1. AFTER TELECON WITH PETER H. PFUND, AMEMBASSY BONN,
ON DEC 30, 1977 I OBTAINED INFORMATION ON SUBJECT MATTER
AND AT MR. PFUND'S REQUEST AM REPORTING BY CABLE ON RE-
SULTS OF MY INQUIRIES, PRINCIPALLY WITH KARL-HEINZ HINTZ,
GERMAN ATTORNEY, WHO REPRESENTS DR. MED. HANS W. FREYMUTH
OF HOPEWELL, NEW JERSEY. HINTZ GAVE ME COPY OF 12 PAGE
COURT OPINION DTD SEP 13, 1977 AND FURNISHED MUCH ADDITI-
ONAL INFORMATION. AM MAILING COPIES OF OPINION TO AD-
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DRESSEES OF THIS MSG. REQUEST THAT ENGLISH TRANSLATION
PLS BE PREPARED SOONEST BY STATE DEPARTMENT WASHDC.
TRANSLATION TO BE DISTRIBUTED TO ADDRESSEES AND ME.

2. FREYMUTH DECISION WAS ORALLY ANNOUNCED Y BERLIN
ADMINISTRATIVE COURT SEP 13, 1977, THE DATE OF FINAL
ARGUMENTS, BUT WRITTEN OPINION WAS SERVED ONLY SATURDAY,

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NOV 19, 1977. DECISION HELD IN SUBSTANCE THAT GERMAN
STATUTES PROVIDING FOR REOPENING OF GERMAN EQUALIZATION
PROCEEDINGS FOR PURPOSE OF OBTAINING REIMBURSEMENT FROM
CLAIMANTS FOR COMPENSATION PAID THEM BY THIRD PARTIES
OR OTHER COUNTRIES, ARE NOT YET INVOKED BY REASON OF
U.S. PUBLIC LAW 94-542, WHICH MERELY PROVIDES FOR
DAMAGE DETERMINATION WHEREBY FUTURE PAYMENTS MAY OR MAY
NOT BE MADE. GERMAN LEGISLATORS PROVIDED FOR SUBSE-
QUENT REOPENING OF PROCEEDINGS AFTER POSSIBLE OTHER
COMPENSATION (E.G. THROUGH AMERICAN PROGRAM) IS RE-
CEIVED. GERMAN AUTHORITIES ARE NOT RPT
NOT AUTHORIZED TO SUSPEND OR UNDULY DELAY DECISION
ESTABLISHING CLAIMANTS' ENTITLEMENT TO COMPENSATION,
ANYWAY, NOT BY REASON OF PL 94-542. NOTE THAT COURT
DECISION DOES NOT CONSTITUTE ORDER FOR PAYMENT OF COM-
PENSATION. HOWEVER, SUCH ORDER COULD READILY BE OB-
TAINED BY A SUCCESSFUL PLAINTIFF. THE DECISION REN-
DERED, IF IT BECOMES FINAL, DECIDED THE CRUCIAL PRIN-
CINPLES AFFECTING OVERLAPPING CLAIMS.

3. FREYMUTH DECISION ALSO RULED THAT REVIEW TO FEDERAL
ADMINISTRATIVE COURT NOT RPT NOT AUTHORIZED "BECAUSE
THE MATTER FAILS TO RAISE LEGAL ISSUES OF BASIC IM-
PORTANCE". AGAINST SUCH DENIAL OF REVIEW DEFENDANT
"LAND BERLIN" COULD FILE OBJECTIONS WITHIN ONE MONTH,
WHICH IT DID DEC 20, 1977. TO DATE REASONS OF OBJECTIONS
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NOT RPT NOT KNOWN TO ATTORNEY HINTZ. ON JAN 5 HINTZ RE-
CEIVED NOTICE FROM ADMINISTRATIVE COURT BERLIN THAT IT
DECIDED TO REJECT DEFENDANT'S OBJECTIONS TO DENIAL OF
REVIEW AND FORWARDED FILE WITH OBJECTIONS TO FEDERAL
ADMIN COURT WHICH WILL RULE ON OBJECTIONS, PROBABLY IN
TWO TO EIGHT MONTHS. (IN MATTERS INVOLVING EQUALIZATION
AUTHORITIES, DECISIONS OF ADMIN COURTS GO DIRECTLY FOR
REVIEW TO FEDERAL ADMIN COURT, IF RPT IF REVIEW
AUTHORIZED. NO RPT NO APPEAL TO UPPER ADMIN COURTS IS
PERMITTED). WAS INFORMED TODAY THAT REPRESENTATIVE OF
EQUALIZATION FUND, WHO ALSO PARTY IN LITIGATION ALTHOUGH
NOT RPT NOT DEFENDANT, HAS FILED OBJECTIONS AND REVIEW.
SUCH REVIEW, TEXT OF WHICH NOT YET KNOWN, COULD ONLY BE
BASED ON ALLEGED SERIOUS PROCEDURAL ERROR BY LOWER
COURT. ATTORNEY HINTZ BELIEVES FEDERAL ADMIN COURT WILL
REJECT SUCH OBJECTIONS AND REVIEW JUST AS HE
BELIEVES IT WILL REJECT DEFENDANT'S OBJECTIONS.

4. HINTZ ADDED HE REPRESENTS THREE OTHER AMERICAN
CLAIMANTS IN ADMIN COURT BERLIN IN SIMILAR CASES. ON
NOV 22, 1977 COURT ANNOUNCED DECISIONS IN FAVOR OF ALL
THREE PLAINTIFFS, BUT BY LAST WEEK COURT HAD NOT YET

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SERVED WRITTEN OPINIONS, THUS TIME LIMIT FOR FILING
OBJECTIONS HAD NOT STARTED TO RUN. (UPDATE: TODAY
HINTZ SAID WRITTEN OPINION IN ONE ADDTL CASE JUST RE-
CEIVED, IT IS ALMOST IDENTICAL TO FREYMUTH OPINION).
I UNDERSTAND OTHER GERMAN ATTORNEYS REPRESENT ADDITIONAL
AMERICAN CLAIMANTS IN ADMIN COURT PROCEEDINGS.
WILL MAKE INQUIRIES.

5. HINTZ SAID HE SEES NO RPT NO INDICATION AS PART
OF THE COURT PROCEEDINGS THAT GERMAN AUTHORITIES PREPARED
TO "THROW IN TOWEL", BUT INSTEAD BELIEVES THEY OPPOSING
VIGOROUSLY. (ON OTHER HAND, ONE EQUALIZATION OFFICIAL,
NOT OF BAA, SAID HE THOUGHT BAA SEEMS GETTING CLOSE TO
ORDERING THE STOP LIFTED). GERMAN GOV ATTORNEYS SUGGESTED
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IN COURT SEP 13, 1977 THAT LITIGATION BE SUSPENDED FOR AT
LEAST SIX MONTHS, WHICH SHOULD SUFFICE TO ALLOW A GOV TO
GOV SOLUTION WHICH, THEY ASSERTED, IS BEING ENDEAVORED
BETWEEN FED EQUALIZATION OFFICE (BAA), FEDREP MINISTRY OF
FINANCE AND FOREIGN OFFICE ON ONE HAND AND US AUTHORITIES
ON OTHER HAND. HINTZ OPPOSED SUSPENSION AND COURT BACKED
HIM UP.

6. SUCH EFFORT OF POSTPONEMENT AND SEVERAL LETTERS OF
BAA TO FCSC INDICATE THAT GERMAN AUTHORITIES INTERESTED
IN AVOIDING FINAL ADMIN COURT DECISIONS FINDING CURRENT
DECISION AND PAYMENT STOP CONTRARY TO GERMAN LAW. IN
THOSE (UNSOLICITED) LTRS BAA WISHES FCSC TO STATE WHETHER
OR NOT CLAIMANTS QUALIFY FOR AWARDS UNDER PL 94-542. I
HAPPEN TO KNOW THAT BAA - IN EVENT FCSC WRITES THAT
CLAIMANTS TO NOT RPT NOT SO QUALIFY - WISHES TO PAY DR.
FREYMUTH AND OTHERS BEFORE RPT BEFORE FINAL ADMIN COURT
DECISIONS ARE RENDERED.

7. THE IMPLICATIONS OF THE FREYMUTH AND OTHER DECISIONS,
PARTICULARLY IF THEY BECOME FINAL, AS A SOLUTION OF THE
PROBLEMS CREATED BY THE GERMAN STOP ORDER SHOULD BE CON-
SIDERED AND EVALUATED CAREFULLY. WHILE FCSC PRESUMABLY
DOES NOT SEEK RESPONSIBILITY FOR GOV TO GOV CONTACTS ON
THIS PROBLEM, FCSC IS OF COURSE INEXTRICABLY INVOLVED,
AS IT MUST EXAMINE AND ADJUDICATE THE CLAIMS OF US
NATIONALS IAW PL 94-542. IT SEEMS INTER-AGENCY TALKS OR
COORDINATION ADVISABLE BEFORE NEXT CONTACT WITH
FEDREP ON GOV TO GOV LEVEL.

8. MY CONTACTS WITH THE FEDERAL EQUALIZATION OFFICE AND
OTHER OFFICES SUPERVISED BY BAA SERVE PURPOSE OF FACT
FINDING AND INVESTIGATION OF AMERICAN CLAIMS UNDER PL
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94-542. I ALWAYS MADE THIS AMPLY CLEAR TO EQUALIZATION
OFFICE AND GERMAN OFFICIALS ALWAYS ACKNOWLEDGED
THEY FULLY UNDERSTOOD THIS. FCSC THROUGH THESE CONTACTS
AT "TECHNICIANS' LEVAL" RECEIVES VALUABLE ASSISTANCE
WHICH IS INDISPENSABLE IN CARRYING OUT MANDATE
OF CONGRESS TO "DETERMINE...VALIDITY AND AMOUNTS OF
CLAIMS...". BETTS UNQUOTE CHRISTOPHER

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